

Original filed 10/6/06

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FERDINAND REYNOLDS,)	No. C 06-1604 JF (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	WITH LEAVE TO AMEND
vs.)	
)	
DIRECTOR OF CORRECTIONS, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Director of the California Department of Corrections and Rehabilitation (“CDCR”) and the Warden at Salinas Valley State Prison. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. Plaintiff filed a separate document entitled “amended ground two” on March 29, 2006. The original complaint will be dismissed with leave to amend in order for Plaintiff to include both of his claims in an amended complaint.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity.

1 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
 2 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief
 3 may be granted, or seek monetary relief from a defendant who is immune from such
 4 relief. Id. at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v.
 5 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a person
 7 acting under the color of state law committed a violation of a right secured by the
 8 Constitution or laws of the United States. West v. Atkins, 487 U.S. 42, 48 (1988).

9 Liability may be imposed on an individual defendant under section 1983 if the
 10 plaintiff can show that the defendant proximately caused the deprivation of a federally
 11 protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of
 12 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
 13 constitutional right within the meaning of section 1983 if he does an affirmative act,
 14 participates in another's affirmative act or omits to perform an act which he is legally
 15 required to do, that causes the deprivation of which the plaintiff complains. Leer, 844
 16 F.2d at 633; Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995). Sweeping
 17 conclusory allegations will not suffice; the plaintiff must instead "set forth specific facts
 18 as to each individual defendant's" deprivation of protected rights. Leer, 844 F.2d at 634.
 19 To state a claim a plaintiff must show a specific constitutional or federal guarantee
 20 safeguarding the interests that have been invaded. See Paul v. Davis, 424 U.S. 693, 697
 21 (1976).

22 B. Plaintiff's Claims

23 Plaintiff filed a complaint alleging one claim alleging that fellow inmates are
 24 preparing Rule Violation Reports at Salinas Valley State Prison concerning other inmates.
 25 Plaintiff then filed an "amended ground two" alleging a separate claim regarding prison
 26 disciplinary hearings.

27 A plaintiff may amend his complaint once as a matter of course at any time before
 28 a responsive pleading is served. See Fed. R. Civ. P. 15(a). Federal Rule of Civil

1 Procedure 15(a) is to be applied liberally in favor of amendments and, in general, leave
2 shall be freely given when justice so requires. See Janicki Logging Co. v. Mateer, 42
3 F.3d 561, 566 (9th Cir. 1994); cf. id. (attempt to amend complaint requiring amendment
4 of scheduling order under Fed. R. Civ. P. 16 must be based upon good cause).
5 Accordingly, the Court will DISMISS the instant complaint in order for Plaintiff to
6 include both of his claims in an amended complaint. Plaintiff shall file an amended
7 complaint on the Court's complaint form, enclosed with this order, **within thirty days** of
8 the date of this order as set forth below.

9 The Court notes that Plaintiff's claims against the Director of the CDCR and
10 Warden Evans fail to set forth sufficient facts showing liability on the part of these
11 Defendants because Plaintiff does not allege the specific actions of each Defendant, nor
12 any resulting harm to him. The Court notes that there is no respondeat superior liability
13 under section 1983, i.e. no liability under the theory that one is responsible for the actions
14 or omissions of an employee. Liability under Section 1983 arises only upon a showing of
15 personal participation by the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
16 1989). A supervisor may be liable under section 1983 upon a showing of (1) personal
17 involvement in the constitutional deprivation or (2) a sufficient causal connection
18 between the supervisor's wrongful conduct and the constitutional violation. Redman v.
19 County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted).
20 Plaintiff must set forth specific allegations as to each Defendant demonstrating how they
21 were involved in the alleged constitutional violation in his amended complaint.

22 Plaintiff must allege facts supporting his claim against each Defendant separately
23 in his amended complaint showing his entitlement to relief from each Defendant.
24 Plaintiff should list the constitutional right he has, describe what each Defendant did or
25 failed to do, and describe how each Defendant's acts or omissions caused him injury.
26 Plaintiff must be careful to allege facts showing the basis for liability for each individual
27 Defendant. He should not refer to the Defendants as a group, i.e., "the defendants;"
28 rather, he should identify each involved Defendant by name and link each of them to a

1 specific claim by explaining what each Defendant did or failed to do that caused a
2 violation of his constitutional rights.

3 Therefore the Court grants Plaintiff leave to file an amended complaint within
4 **thirty days** of the date this order is filed, to include both of his claims and allege
5 sufficient facts to support his claims against the named Defendants.

6 CONCLUSION

7 1. Plaintiff's complaint is hereby DISMISSED with leave to amend, as
8 indicated above, within **thirty days** from the date this order is filed. The amended
9 complaint must include the caption and civil case number used in this order (06-1604 JF
10 (PR)) and the words AMENDED COMPLAINT on the first page. Because an amended
11 complaint completely replaces the original complaint, Plaintiff must include in it all the
12 claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.), cert.
13 denied, 113 S. Ct. 321 (1992). Plaintiff may not incorporate material from the original
14 complaint by reference. Plaintiff must include all documentation and supporting
15 information regarding his claims with the amended complaint. **Failure to amend within**
16 **the designated time will result in the Court proceeding with review of the original**
17 **complaint.**

18 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
19 Court informed of any change of address by filing a separate paper with the Clerk headed
20 "Notice of Change of Address." He must comply with the Court's orders in a timely
21 fashion or ask for an extension of time to do so. Failure to comply may result in the
22 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

23 IT IS SO ORDERED.

24 DATED: 10/6/06


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Ferdinand Reynolds
3 D-11772
4 Salinas Valley State Prison
5 P.O. Box 1050
6 Soledad, CA 93960-1050
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